

# Oroville Facilities Relicensing FERC Project No. 2100

## Introduction to Negotiation Framework



Oroville, California

October 22, 2002

# Process Goals and Objectives

- Produce on-time, quality license application
- A successful, fair settlement
- Effective use of public resources
- Accepted by FERC, mandatory conditioning agencies
- Based on study results, solid process
- Addresses project impacts
- Furthers measurable resource objectives
- Minimum of conflict

# Introduction to Negotiation Framework

- Overall Negotiation/Settlement Process
- PM&E Development Framework

# Overall Negotiation/Settlement Process



# Why An ALP?

- We are all better off with a settlement than without a settlement
- The Basis of Collaborative Planning rests on the fact that once a group agrees on a common solution (i.e. Settlement Agreement) the group then agrees that it will take steps together toward the common goal

# Disadvantages of Positional Negotiations

- In Positional Negotiations (i.e. Major League Baseball Labor Negotiations), the two sides fight for their “share of the pie” at the expense of each other’s share
- In the end, both sides may end up losing or at stalemate, which may result in litigation or arbitration. Oftentimes the parties end up depressing the value of what they were negotiating for (No Baseball games, no revenue for either side)

# Advantages of Mutual Gains Negotiations

- Creative solutions offer expanded opportunities for everyone's benefit
- Focuses on interests, not positions
- Durable agreements
- Balanced agreements – well-managed trade-offs

# Negotiation Timeline

## 2003

- Work groups develop potential PM&E measures
- Plenary Task Force creates Settlement Process Protocol, secures consensus from Plenary

## 2003 – 2004

- Work groups screen/discuss individual PM&Es, address cross resource issues
- Draft Application/Environmental Document available for Plenary review
- Plenary Task Force negotiates PM&E package, reduces potential conflicts among resources with Work Group support

## April 2004 – Jan 2005

- Plenary Task Force single-text edits settlement agreement
- Plenary agrees to settlement agreement



# Roles in Negotiation

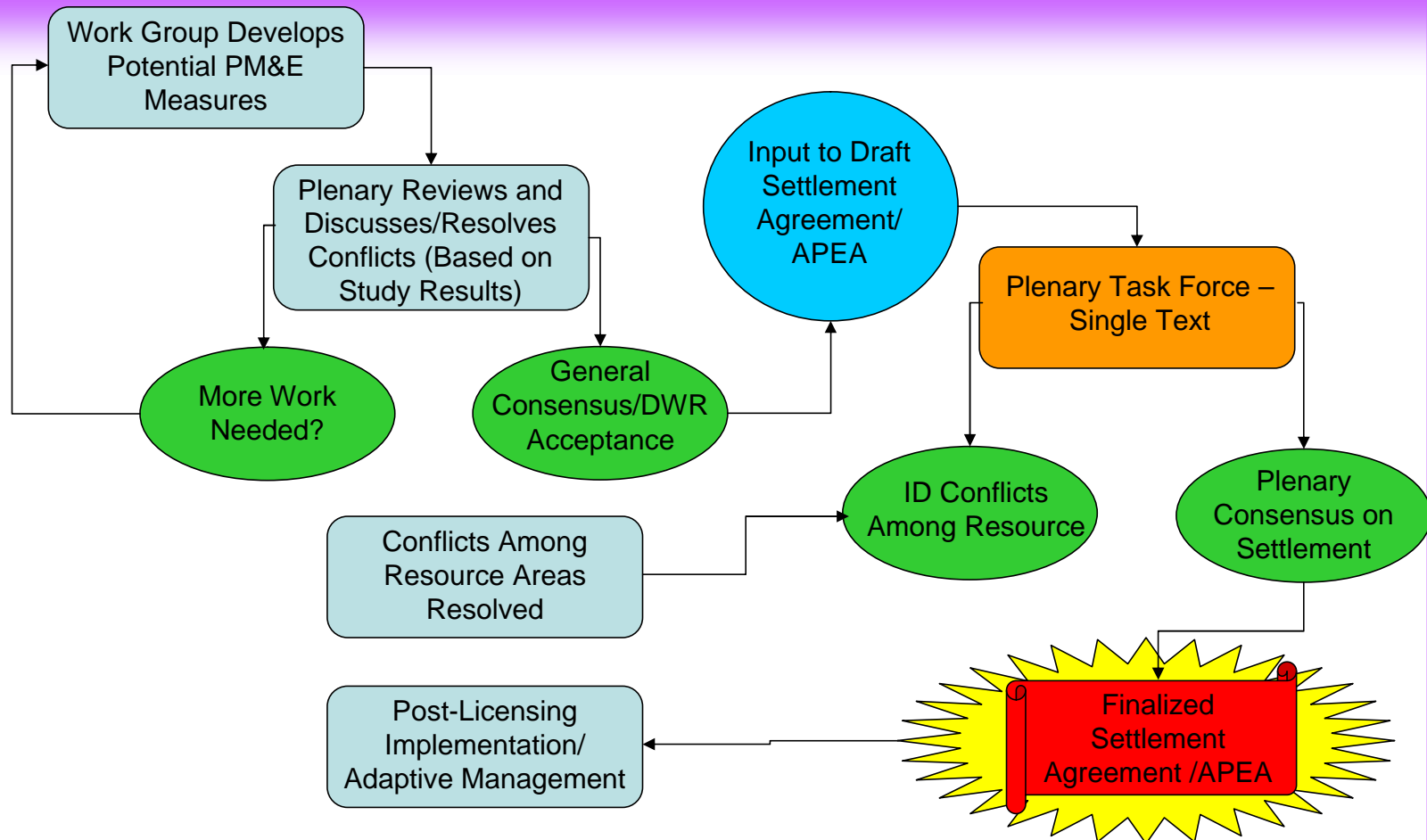
## Plenary

- Establish policy/settlement protocols
- Prepare for negotiations based on policy
- Negotiate PM&E package
- Consider/resolve across resource impacts
- Plenary Group approves settlement

## Work Group

- Collect information on project impacts, analyze potential PM&Es
- Identify range of alternative individual PM&E options
- Discuss, screen, and evaluation of individual PM&E measures
- Identify potential trade-offs for PM&Es
- Address cross-resource issues

# Overall Negotiation Process



# ALP Common Goal: Comprehensive Settlement Agreement

- Comprehensive Settlement Agreement
  - Collaboratively developed and balanced set of protection, mitigation and enhancement measures negotiated using mutual gains negotiation techniques and approved by the plenary.
- Facilitate development of a new license application and will serve as a basis for the new license.
- State the mutually acceptable resolution of Participants' disputes that arose in connection with the original license for the Oroville Facilities.
- On case-by-case basis, mutually acceptable resolution of Participants' disputes that are related to the future operations of the Oroville Facilities outside of FERC's jurisdiction.

# What's in a Settlement Agreement?

- Our Signatures on a comprehensive resource agreement
- There is no regulatory requirements for Settlement Agreement Structure, however 18 C.F.R. 385.602 (Rule 602) states that Settlement Agreements “must be fair, reasonable and in the public interest”
- FERC License Orders have also demonstrated that any license conditions proposed by the agreement must be enforceable by FERC (i.e. within FERC's jurisdiction)

# Important Aspects of Settlement Agreement Proposed License Conditions

- Protection, Mitigation and Enhancement (PM&E) measures that are within FERC's authority (Project nexus for impact mitigation)
- No approval authority to other agencies or private entities for project operation, maintenance, safety or construction
- “License Language” – language that can be transferred directly from the Settlement Agreement to the license

# Adaptive Management Goals in Settlement Agreements

- Use bounded terms – set specific targets based on incoming information
- Agree in advance on implementation and interpretation of information
- Use specific triggers for specific actions – identify incremental adjustments
- Adaptive management should not just defer conflicts
- Identify relationship between adaptive management provisions and agency mandatory conditioning authority

# Sample Settlement Table of Contents

- Administration
  - Jurisdiction
  - Effect of Settlement
  - Dispute Resolution
  - Modification and Amendment
- Coordination of Mandates/Settlement Agreement
  - Federal and State Mandatory Conditions
  - Clean Water Act Water Quality Certification
- General Settlement Provisions
  - Post-Licensing Issues

# Sample Settlement Table of Contents (Cont'd.)

- Comprehensive Resource Settlement Agreement

- Geomorphology
- Water Quality & Releases
- Fish Protection
- Terrestrial
- Land Use Management
- Recreation
- Cultural
- Engineering & Operations

***Terrestrial Resources  
Settlement Agreement***

- ***Wildlife habitat***
- ***Riparian Areas***
- ***Endangered, Threatened, Candidate and Sensitive Species***
- ***Wildlife Habitat Acquisition***
- ***Overall Planning and Protective Measures***
- ***Association with other Resources***
- ***Status Quo Measures***
- ***Adaptive Management goals***



# Process Protocols: Settlement

## Process Protocol Component

- Meetings will be structured differently
- Additional groundrules - collaboratively developed - will need to be implemented
- Settlement process will guide negotiations
- Negotiation sub-groups to coordinate

# Sample Settlement Process Protocol

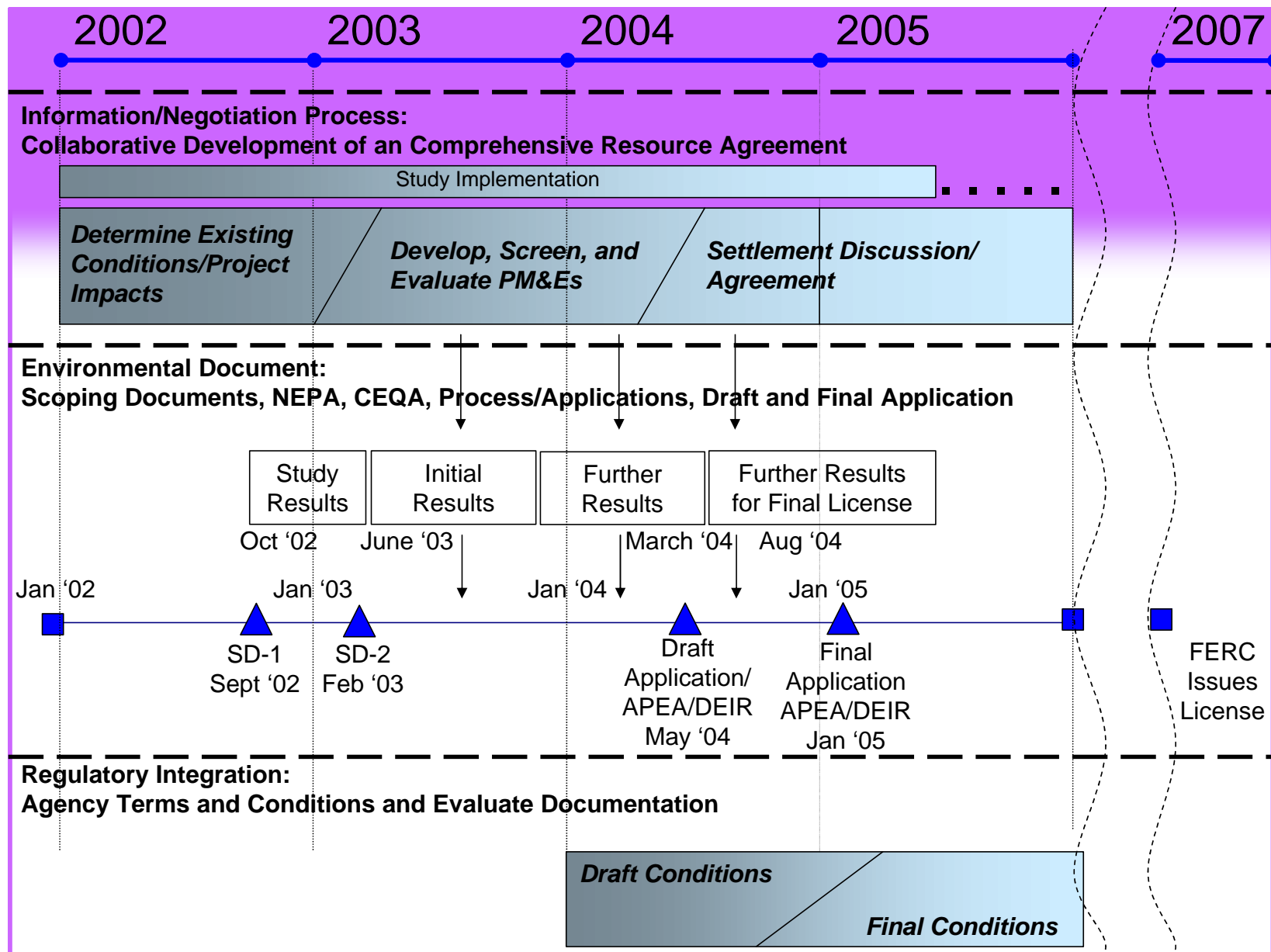
- Introduction/Overview
- Goal
- Principles
- Roles/Responsibilities
  - Stakeholder assigned leads
  - Interested Participants
  - Mediation/Facilitation team
  - Resource Level groups
  - Plenary Task Forces Negotiation Subgroup

# Sample Settlement Process Protocol (Contd)

- Organizational structure
  - Regulatory integration
- Timeframe/Phases
- Refine Ground Rules
  - Define consensus
  - Second table management
  - Dispute resolution
  - Document management
  - Meetings process
  - Confidentiality
  - Public media communications

# PM&E Development Framework

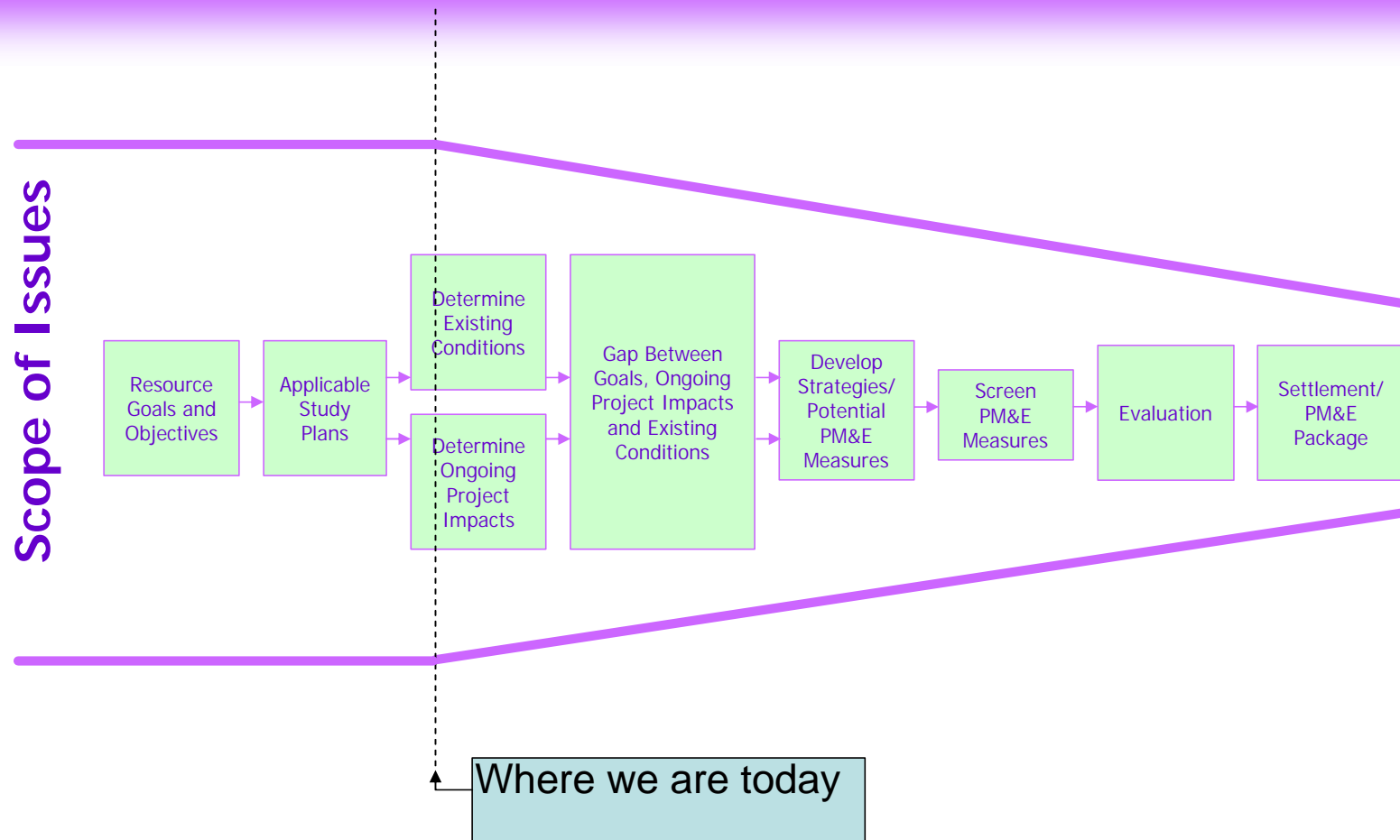




# PM&E Development Framework Goals

- Stepwise structure for productive Work Group/Plenary discussions
  - Subject-by-Subject Process
- Provide record of collaborative decisions
  - Progress in PM&E Development
  - Agreement/Disagreement
- Provide basis for screening of PM&Es and decision-making

# PM&E Development Framework



# Timeline for PM&E Development Framework/Settlement Process Protocol

## October

- Select stakeholder representatives for drafting team

## November

- DWR develops Strawman protocol
- Task-force meets

## December/ January

- Process task-force meets bi-weekly
- Single-text edits Strawman
- Secures approval from “second table”
- Plenary approves PM&E development

## February

- Plenary Group approves and adopts negotiation framework/settlement process protocol



## Timeline for PM&E Development Process/Settlement Process Protocol

- PM&E Development Framework  
Approved by Plenary Group in  
December 2002
- Establish plenary process task force in  
October
- Settlement Process Protocol approval in  
February 2003